

REMARKS/ARGUMENTS

The claims are 2-5, which were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Theurer* U.S. Patent No. 5,099,097 (*Theurer* '097) in view of *Theurer* U.S. Patent No. 5,694,856 (*Theurer* '856) alone or in further view of *Carstensen et al.* U.S. Patent No. 4,800,817.

Essentially, the Examiner's position was that *Theurer* '097 discloses the method recited in the rejected claims except for a rail anchor in front of the welding machine in the working direction via a force-locking connection of a section of rail to ties, that *Theurer* '856 discloses this feature, and that it would have been obvious to one of ordinary skill in the art to modify *Theurer* '097 with rail anchor with ties as taught by *Theurer* '856 in order to prevent or resist longitudinal rail movement.

The Examiner also indicated that *Theurer* '097 as modified by *Theurer* '856 discloses the method recited in the rejected claims except for producing a third rail adjoining the second rail, that *Carstensen et al* discloses this feature, and that it would have been obvious to one of ordinary skill in the art to modify *Theurer* '097 as modified by *Theurer* '856 with a third rail as taught by *Carstensen et al* in order to form a unitary track section many times longer than the length of individual rail

segments.

This rejection is respectfully traversed and reconsideration is respectfully requested.

It is respectfully submitted that *Theurer '097*, *Theurer '856*, and *Carstensen et al.* fail to disclose or suggest a method for welding two rails of a track using a welding unit of a welding machine as recited in Applicants' claims or the benefits achieved by passing a compressive force for producing a compressive stress into a front rail end of a second rail via a rail-pushing device supported on a rail anchor of a third rail in a direction towards the first rail parallel to the welding of the first rail to the second rail.

The primary reference to *Theurer '097* shows a welding unit that is functionally identical to the welding unit 1 shown in FIG. 1 of the Applicants' application. The welding unit of *Theurer '097* only contains additional clamping units that are connected to the welding unit for higher pressing forces. There is no disclosure or suggestion of a rail-pushing device that is supported on the rail anchor of a third rail and is force-lockingly brought into contact with the adjoining rail ends of the second and third rails, respectively, while the welding unit

is placed over the adjoining rail ends of the first and second rails, respectively, and force-lockingly connected to the two rail ends by means of the clamping jaws.

With Applicants' method as recited in claim 5, the rail pushing device is separated and distanced from the welding unit. See, e.g. FIG. 4. Normally, this distance is up to 360 meters (see page 2, last paragraph, last two sentences of Applicants' disclosure) and is needed as the rail has to be contracted some centimeters between the rail pushing device and the welding unit.

The defects and deficiencies of the primary reference to *Theurer '097* are nowhere remedied by the secondary references to *Theurer '856* and *Carstensen et al.* *Theurer '856* simply discloses a rail anchor application machine. Rail anchors are a means attached to every tie in order to upgrade the connection between the tie and the rail and have nothing to do with welding of rails. In fact, there is no disclosure or suggestion in *Theurer '856* of a welding machine at all.

Carstensen et al. is further afield. *Carstensen et al.* simply discloses an alignment device in order to obtain the correct distance between two rails being distanced at a so-called gauge. In *Carstensen et al.*, an adjusting force for the

alignment of the rail is always directed perpendicular to the length of the rail. There is no disclosure or suggestion of a compressive force in a direction towards the first rail as recited in Applicants' claim 5.

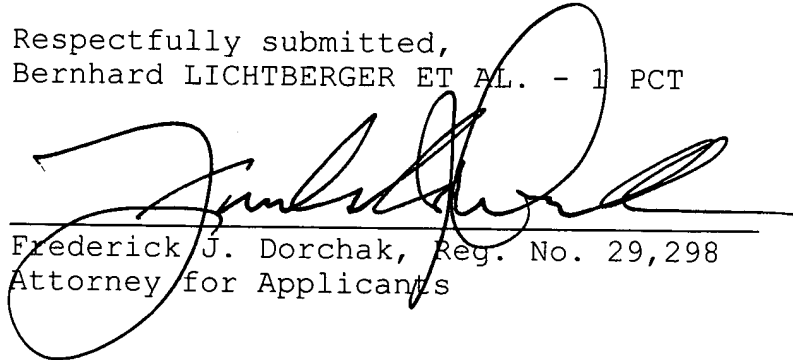
Thus, even if the hypothetical combination suggested by the Examiner were to be made, one would still not achieve Applicants' method as recited in claim 5. Moreover, it is respectfully submitted that one skilled in the art would have no reason to make the hypothetical combination suggested by the Examiner or to pass a compressive force for producing a compressive stress into a front rail end of a second rail via a rail-pushing device supported on a rail anchor of a third rail in a direction towards the first rail parallel to the welding of the first rail to the second rail from anything taught by the cited references.

Accordingly, it is respectfully submitted that claim 5, together with claims 2-4 which depend thereon, are patentable over the cited references.

In view of the foregoing, it is respectfully requested that the claims be allowed and that this application be passed to issue.

Respectfully submitted,
Bernhard LICHTBERGER ET AL. - 1 PCT

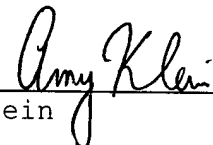
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